

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

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|-------------------------|---|------------------------|
| KEITH LYDELL GADDIS, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| vs. |) | Case No. CIV-11-1481-F |
| |) | |
| JUSTIN JONES, Director, |) | |
| |) | |
| Respondent. |) | |

ORDER

Petitioner, a state prisoner appearing *pro se* whose pleadings are liberally construed, brings this action seeking habeas relief under 28 U.S.C. § 2254.

Magistrate Judge Robert E. Bacharach entered his Report and Recommendation in this matter on November 6, 2012, recommending that the court deny the petition for habeas relief. Doc. no. 19. Petitioner filed an objection to the magistrate judge's recommended findings and conclusions. Doc. no. 22.

The court reviews all objected to matters *de novo*.


Upon review, and having considered all objections, the court concurs with the magistrate judge's determinations and concludes that it would not be useful to cite any additional arguments or authorities here.

Accordingly, the Report and Recommendation of Magistrate Judge Bacharach is **ACCEPTED, ADOPTED** and **AFFIRMED** in its entirety. The petition for a writ of habeas corpus is **DENIED**.

Petitioner is entitled to a certificate of appealability only upon making a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). This standard is satisfied by demonstrating that the issues movant seeks to raise are deserving of further proceedings, debatable among jurists of reasons, or subject to

different resolution on appeal. *See, Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (“[W]e give the language found in §2253(c) the meaning ascribed it in [*Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)], with due note for the substitution of the word ‘constitutional.’”). “Where a district court has rejected the constitutional claims on the merits,...[t]he petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Id.* When a prisoner’s habeas petition is dismissed on procedural grounds without reaching the merits of the prisoner’s claims, “a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Id.* Petitioner has not made the requisite showing, and a certificate of appealability is **DENIED**.

Dated this 29th day of January, 2013.


STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

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